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riage. The basis of a maritime lien is to be found in marine service by or to the vessel herself, often irrespective of the contracts of her owner. Where, therefore, the parties have made a contract of carriage, there remains the further question as to what must be done in performance of the contract in order to entitle the passenger or the shipper to a lien upon the vessel herself. Many of the cases, including *The Eugene*, seem to proceed upon the theory that the obligation between the vessel and the cargo or passenger being mutual and reciprocal the lien attaches as soon as the cargo or the passenger is on board the ship, or at least under the control of the master. It is conceived, however, that in strictness no lien upon the vessel comes into existence until she sets sail. Before the voyage actually begins, the passenger or shipper has adequate remedy against the carrier in the courts of common law, or by a proceeding *in personam* in the courts of admiralty; and until that time the vessel herself can hardly be considered at fault. But as soon as the vessel leaves her dock, she enters upon marine service, and from that moment the vessel and the cargo or passenger may truly be regarded as mutually and reciprocally bound. This view is certainly supported by the analogous cases which hold that the carrier has no lien upon the goods until the ship starts upon her voyage.

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THE MAKER'S DEFENCE OF "NEVER CONTRACTED." — A late English case, decided by Lord Chief Justice Russell, clearly illustrates an important distinction in the law of negotiable paper. In this case, *Lewis v. Clay* (reported in 42 Solicitors' Journal, 151), which was an action by the payee of a note against one of two co-makers, the defendant pleaded that he never made the note. It seems that the defendant signed the instrument without reading it, relying upon the fraudulent statement of his friend, the other co-maker, that he was simply witnessing a deed. The jury found that the defendant had not been negligent, and that the plaintiff took the note from the fraudulent co-maker for value and without notice. It was held that the defendant, having used due care, was not estopped from setting up the true facts; and that, according to these facts, the defendant had never made the note in question.

Unquestionably the true nature of the obligation assumed by the maker of a note is that of contract to pay the payee or the holder in due course. One of the essential characteristics of contract, however, is mental assent, and in such a case as *Lewis v. Clay*, *supra*, where the defendant thought he was signing an entirely different instrument, it is certainly difficult to find this feature. As tersely put by Mr. Justice Byles, in *Foster v. Mackinnon*, L. R. 4 C. P. 704, a similar case, "he never intended to sign, and therefore, in contemplation of law, never did sign, the contract to which his name is appended." Though, in Lord Russell's view, the plaintiff in *Lewis v. Clay*, being the named payee, was not a holder in due course, it has been the law ever since the decision in *Foster v. Mackinnon* that, in the absence of negligence, the plea that there has not only been fraud, but that the defendant has never entered into the contract, is equally available against such a holder. Where, however, the defendant has acted without due care, as by not reading the paper when he should have read it, it is properly held that he is estopped as against a purchaser for value without notice from denying the execution of the instrument; and, according to *Lewis v. Clay*, the

negligent defendant may also be estopped as against the named payee who has purchased innocently.

There is clearly a sharp distinction between such cases as *Foster v. Mackinnon* and *Lewis v. Clay*, and the cases where the defendant has really intended to enter into the contractual obligation represented by the negotiable instrument upon which he has placed his name. In the latter cases, the defendant has actually made the note in question, and, though he has been induced to sign his name by fraud or duress, he is nevertheless liable to a purchaser for value without notice.

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THE PAYEE AS A HOLDER IN DUE COURSE. — The case of *Lewis v. Clay* discussed in the preceding note, is also of interest because of Lord Russell's *dictum* that the plaintiff as named payee was an immediate party, and could not, therefore, be regarded as a holder in due course, though he paid value and took without notice.

Lord Russell, in support of this view, relies chiefly upon the Bills of Exchange Act. It would seem, however, that by a proper interpretation of that statute, such a payee as the plaintiff in the case under consideration should be regarded as much a holder in due course as a subsequent transferee; and, apart from the statute, Lord Russell's position is clearly inconsistent with the overwhelming weight of authority both in England and the United States. See, among other cases, *Masters v. Ibberson*, 8 C. B. 100; *Watson v. Russell*, 31 L. J. Q. B. 304; *Fairbanks v. Snow*, 145 Mass. 153; *Lucas v. Owens*, 113 Ind. 521, and cases cited. Apparently the courts of only one jurisdiction hold the contrary opinion. See *Camp v. Sturdevant*, 16 Neb. 693. Moreover, it is conceived that on strict legal principle the *dictum* cannot be supported. The payee, in such a case as *Lewis v. Clay*, purchases the legal title to an instrument, complete and regular on its face, for a valuable consideration and without notice of fraud, duress, or lack of consideration. Under such circumstances, to subject the plaintiff to all the defences that might be raised against an immediate party privy to the whole transaction, would not only work injustice, but would be contrary to well-established principles of law as to the nature of purchase for value without notice.

The provisions of the English Bills of Exchange Act in regard to a holder in due course have been incorporated into the Negotiable Instruments Law, which has been already enacted in several of our States, and American lawyers, therefore, will be especially interested in watching the influence of Lord Russell's position upon future decisions. It is not believed that either the English or the American courts will change their present opinion.

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RECAPTION OF A RAILROAD SEAT. — An interesting and unique case in railroad law was recently decided in one of the English lower courts (see Albany Law Journal, Jan. 8, 1898). A gentleman travelling in a train temporarily left his carriage at one of the stations, and took the usual precaution to reserve his seat by leaving therein his umbrella and newspapers. While absent, another passenger seized his seat, and refused to give it up until forcibly ejected by the former occupant. The ejected passenger brought an action for damages against the original holder of the seat. The action was dismissed, and a counter-claim for similar damages sustained. The court said that this universal mode of